

**IOPC independent investigations:
Information for police officers, staff
and their representatives**

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> Introduction

The IOPC oversees the police complaints system in England and Wales. It is independent, making its decisions completely independently of the police, government and complainants. Part of our remit is to analyse the actions taken by police officers and police staff after a death or serious injury which occurred during or following contact with the police. We also investigate the most serious complaints and conduct referrals from police forces. All officers must adhere to the **Standards of Professional Behaviour**. Police staff may have specific contracts that set out the expectations of their role.

This document sets out key messages for police officers and police staff who are involved in an incident or allegation that is subject to an IOPC investigation.

Throughout our investigations, it is likely that officers and staff will receive regular correspondence from IOPC investigators. This will cover their status, information about interviews and updates about the investigation. The IOPC seeks to provide a consistent approach so that officers and staff know what to expect from the IOPC.

This document explains:

- the process involved in assessing the status of officers and staff during an IOPC investigation
- the process involved in making severity assessment decisions
- the process of serving a notice of investigation
- police witnesses
- how we will contact and update you

This document explains how our investigations affect police officers and staff. Separate regulations set out how we investigate contractors¹. This document is also not exhaustive and will be updated to reflect any changes to legislation.

Further information is available on our website².

> Identifying the status of people involved in our investigations

During the course of our investigations, we can apply an official status to those involved. There are two types of official status: subject or witness.

Police officers and staff who had more than peripheral involvement in an incident will be considered to be witnesses, unless the investigator considers there to be an **indication** that the person **may** have:

- committed a criminal offence, or
- behaved in a manner that would justify them facing disciplinary proceedings

If either or both of these indications are present, it means that you can be treated as a subject of that investigation.

At this stage, you should note that the threshold for the investigator to consider an officer or staff member as a subject is low – an ‘indication’³.

The lead investigator will look at the particular circumstances of each case to assess whether there is an indication of criminality or misconduct. In order to carry out this assessment, the investigator will consider the evidence available at that time. In some cases, the lead investigator may decide that further evidence is needed before this decision is made and will keep the status of the officer under review throughout the investigation.

> When will the status of those involved be decided?

An IOPC investigator will decide from the outset of the investigation whether they consider police officers or staff members involved in the investigation as witnesses or subjects. This decision is subject to review throughout the entire investigation.

The status of a police officer or staff member may change from being a witness to a subject at any point in the investigation, as more evidence is gathered.

Once an officer has been identified as a subject, it is very unlikely that their status will change – unless there is a clear indication that the information used to make this decision was not valid.

¹ Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

² www.policeconduct.gov.uk

³ Paragraph 19B, Schedule 3, *Police Reform Act 2002*.

> Severity assessment

When an investigator decides there is an indication that the officer may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings, they are required to conduct a severity assessment⁴.

A severity assessment looks at whether the conduct, if proved, would amount to either gross misconduct, or misconduct that is so serious as to justify disciplinary action. It also considers the form that any disciplinary proceedings would be likely to take, if applicable. 'Misconduct' means a breach of the Standards of Professional Behaviour that would justify disciplinary action. 'Gross misconduct' means a breach of the Standards of Professional Behaviour that is so serious it would justify dismissal⁵.

The severity assessment also looks at what form the proceedings would be likely to take. For officers, if the conduct would amount to misconduct, then a meeting would be appropriate. If it would amount to gross misconduct, it would go to a hearing.

An officer may also go to a hearing if their conduct amounts to misconduct, but they were subject to a live final written warning at the time of the initial severity assessment, or if they had been reduced in rank under the Police (Conduct) Regulations 2004 or Police (Conduct) Regulations 2020 less than two years before the initial severity assessment.

Table 1 on page 9 explains the possible outcomes of misconduct meetings or hearings. Please note: this may vary for police staff members depending on their contract.

The investigator will also consult the appropriate authority about the severity assessment before the final decision is made⁶.

The IOPC will notify the police officer or staff member about the severity assessment when they tell them that they are considered to be subject to the investigation.

> What happens if you are subject to investigation?

When an IOPC investigator decides that a police officer or staff member should be treated as subject to investigation, they will serve a notice to this effect as soon as is practical.

⁴ Paragraph 19B, Schedule 3, *Police Reform Act 2002*.

⁵ Paragraph 29, Schedule 3, *Police Reform Act 2002*.

⁶ The 'appropriate authority' refers to: for a chief officer, the local policing body for the police force of which the officer is a member; and in any other case, the chief officer with direction and control over the person serving with the police.

Serving a notice on police officers

The notice must be either:

- given to the officer in person by their police friend, which includes Police Federation representatives, where the police friend has agreed to deliver the notice
- given to the officer in person by the investigator (in an independent investigation this must be an IOPC investigator, in a directed investigation it should be the investigating officer from the police force)
- left with someone at, or sent by recorded delivery to, the subject's last known address (this option will usually apply only if it is not possible for the investigator or police friend to serve the notice in person)⁷

The notice should include the following details⁸:

- details of the allegation and how this conduct is alleged to fall below the Standards of Professional Behaviour
- that there is to be an investigation, and the identity of the person investigating
- the investigator's assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct
- whether, if the matter were to be referred to misconduct proceedings, those would be likely to result in a misconduct meeting or a misconduct hearing
- that, if the person concerned is dismissed at disciplinary proceedings, information including the person's full name and a description of the conduct which led to dismissal will be added to the police barred list and may be subject to publication for a period of up to five years
- the person's right to seek advice from his staff association or any other body, and the role of a police friend
- the right to make representations to the investigator in response to the notice, and the requirement for the investigator to consider them if they are made within ten working days
- the misconduct caution

Alongside the written notice under Regulation 17 of the Conduct Regulations or Regulation 17 of the Complaints Regulations, the investigator must also draw up the terms of reference for the investigation and provide these terms of reference for the investigation to the officer concerned, subject to certain exemptions.

Serving a notice on police staff

The way of serving the notice of investigation may be specified in the staff member's terms and conditions of employment or by local force policy.

⁷ Regulation 17, Police (Complaints and Misconduct) Regulations 2020.

⁸ Regulation 17, Police (Complaints and Misconduct) Regulations 2020.

The IOPC investigator may serve the notice in person. Alternatively, the investigator may ask that a manager from the police force or a union representative serve the notice in person.

Depending on their contract of employment and local force policy, it might also be appropriate to indicate (in the notice) whether the conduct has been assessed as amounting to misconduct or gross misconduct. The decision about whether to include this will be based on the member of staff's contract.

If there is an indication that the police officer or staff member has committed a criminal offence, they will receive a letter outlining the details.

Being interviewed as a subject to investigation

Officers and staff should expect to be interviewed about the incident by IOPC investigators. In exceptional circumstances, the investigator may make a decision that an interview is not required, but this will only be after the officer or member of staff has had an opportunity to respond to the notice of investigation.

The interview will be under the misconduct caution and, where appropriate, criminal caution. The timing of the interview will be decided according to the needs of the investigation. This is an opportunity to tell us the facts and provide an account of the incident.

The subject is entitled to representation from a police friend⁹.

If the subject is a serving officer, their police friend must be a serving police officer, a police staff member, or a person nominated by the subject's staff association. (The staff association may choose to nominate a lawyer as a police friend.)

If the subject is a member of police staff, their police friend may be a trade union representative, a police officer, a police staff member, or any other person nominated by the subject and approved by the chief officer of the force in which they are serving.

The police friend must not be an interested person to the investigation or otherwise involved in the investigation.

The subject is not entitled to any other representation in the interview. However, if the misconduct interview was immediately preceded by a criminal interview, the lead investigator may consider allowing the legal representative to remain for the rest of the interview.

⁹ Regulation 17, Police (Complaints and Misconduct) Regulations 2012.

Where will the interview take place?

Each interview location and the circumstances of the officer or staff member should be assessed on its own merits. Any representations made by the officer, staff member or their representatives should be considered when deciding where to hold an interview.

> What happens if you are considered a witness in an investigation?

All investigations scrutinise the acts, omissions, statements and decisions of the officers and police staff involved in the incident. This is regardless of whether a complaint has been made and whether the officers involved are served notices. For example, during a death or serious injury investigation into a fatal police shooting, the actions of the police officers involved in the incident will be under scrutiny, even if they are being treated as witnesses.

The investigator may wish to make arrangements to interview or obtain an account from the witness.

As a witness, you are expected to co-operate in IOPC investigations, inquiries and formal proceedings, as required in the Standards of Professional Behaviour.

The investigator will look to achieve best evidence, usually by way of a witness interview and statement summarising the evidence. Statements are normally drafted and finalised in the presence of the witness. The witness is encouraged to actively participate in the drafting to make sure that they are completely happy with the statement before it is signed. Occasionally, the investigator may decide that the witness can provide a statement without the need for an interview – for example, if the witness's involvement is on the periphery of the incident. The investigator will speak directly to the witness (and their representative, at the witness's request) to discuss how to proceed.

> How often will the investigator update subjects and witnesses?

Contacting subjects

The IOPC will update officers/staff who are subject to investigation at least every 28 days, unless a different timeframe is agreed by the lead investigator.

The lead investigator is required to notify the officers/staff about the decisions taken after completion of the investigation. This is subject to the harm test. Any information that may prejudice any criminal investigation or proceedings will not be disclosed.

Contacting witnesses

There is no set position about how often the lead investigator will update witnesses. This will be decided by the lead investigator at the beginning of the investigation. It

will depend on several factors, including the level of involvement and interest of the police officer/staff member, proportionality and the requirements of the investigation.

Method of contact

The investigator will discuss the most effective form of communication with their single point of contact (SPOC) in the police force Professional Standards Department. This will depend on a number of factors, such as the size of the investigation, preferences of the officer/staff member involved, and any other relevant factors.

It may be decided that it is more practical for the investigator to contact the officer/staff member directly by email, copying the SPOC into the message.

In a conduct matter, if someone who is subject to an investigation requests that we communicate through their police friend, Police Federation, union or other representative, then the investigator may decide to send all correspondence through the chosen representative. When the officer/staff member receives their notice of investigation, it will include a tick box where they can indicate their preference.

In a criminal matter, the officer/staff member involved may request that all communication is made through their solicitor.

Our preference is to ensure that the officer/staff members receives copies of all correspondence that is sent to their representatives, unless they specifically request not to receive these copies.

> Outcomes after an investigation is completed

On receipt of the investigation report, the case decision maker¹⁰ must conclude whether 'in their opinion':

- The police officer or staff member has no case to answer, or a case to answer for misconduct or gross misconduct. In the case of the latter, the decision maker will also give their opinion as to whether disciplinary proceedings should be brought against the police officer or staff member and, if so, what form those proceedings should take.
- The performance of the police officer or staff member was unsatisfactory, and performance proceedings should be brought against them.
- Any matter which was the subject of the investigation should be referred to be dealt with in the reflective practice review process¹¹.

It is important to note that the case decision maker's conclusion does not determine whether the police officer or staff member has committed misconduct. It sets out

¹⁰ The term 'case decision maker' is used to define the person primarily responsible for the key decisions in an investigation. This includes the investigation outcome decisions.

¹¹ The reflective practice review process focuses on putting an issue right and preventing it from happening again by encouraging those involved to reflect on their actions and learn. It is not a disciplinary process or a disciplinary outcome.

whether the case decision maker finds that there is sufficient evidence on which a reasonable misconduct meeting or hearing could find, on the balance of probabilities, that the conduct of the officer amounts to misconduct or gross misconduct.

Once we have concluded our investigation, we share our report and opinion with the appropriate authority. The appropriate authority can make representations. While we will consider those views, we will make the final decision on whether a misconduct meeting or hearing should take place.

If the case is referred to misconduct proceedings, the decision at the meeting or hearing will be determined on the standard of proof required in civil cases, which is the balance of probabilities. In a small number of circumstances, we will be able to present our case at misconduct hearings where there is a disagreement between us and the appropriate authority about a case to answer for gross misconduct.

If the meeting or hearing finds the misconduct to be proved, it will then decide the appropriate outcome. The possible outcomes are listed in **table 1**.

Table 1: Potential outcomes of a misconduct meeting/hearing¹²

Misconduct meeting	Misconduct hearing
<ul style="list-style-type: none"> • Misconduct not found • Reflective practice review process where no misconduct found • No further action • Written warning (18 months) • Final written warning (two years) 	<ul style="list-style-type: none"> • Misconduct not found • Reflective practice review process where no misconduct found • No further action • Written warning (18 months) • Final written warning (two years) • Extension of final written warning • Dismissal with notice • Reduction in rank • Dismissal without notice

Barred and advisory lists

Police officers, special constables and staff who are found guilty of gross misconduct and are dismissed, or would have been if they had not retired or resigned, will be put on a barred list. Police forces and other policing bodies, including the IOPC, will have to refer to this list before making appointments and are prohibited by law from employing anyone on the barred list.

Police officers or staff members who are under investigation for a matter that could lead to their dismissal, and who retire or resign during an investigation into that matter, will be placed on an advisory list. Where an officer has retired or resigned,

¹² Annex E, Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures.

and an allegation comes to light after they have left that could have led to their dismissal, they will also be added to this advisory list. This is so that policing bodies are aware of any ongoing proceedings or relevant allegations when carrying out pre-employment checks.

When disciplinary procedures have concluded, the next steps will be as follows:

- if the person is dismissed, or for former officers there is a finding that they would have been dismissed if still serving, their name will be added to the barred list
- if the case is not proved, their name will be removed from the advisory list

Staff members who resign or retire before disciplinary proceedings can take place will remain on the advisory list for at least five years. If the allegation did not relate to their conduct, they will be removed from the advisory list automatically after five years. For conduct allegations, the former staff member can apply to the College of Policing to request that their details are removed from the list after five years.

The College of Policing is responsible for maintaining both the barred and advisory lists.

In the final investigation report, the investigator will provide his or her view about whether there is evidence that a criminal offence has been committed. The final investigation report is then submitted to the regional director or director for Wales. They, or they delegate, will be required to decide whether there is an indication that a criminal offence may have been committed and whether, in the circumstances, it would be appropriate for the contents of the report to be reviewed by the Director of Public Prosecutions.

If the regional director or director for Wales is satisfied that these conditions are met, the report will be formally referred to the Crown Prosecution Service (CPS). The CPS decides whether to bring charges against the police officer or staff member being investigated.

> For more information

For more information please visit our website: www.policeconduct.gov.uk

If you have any questions, please contact the IOPC investigator leading the investigation you are involved in.